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**Law**

**LEGAL ASSISTANCE, NOTARY, AND  
PREVENTIVE LAW PROGRAMS**

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This instruction implements AFPD 51-5, *Military Legal Affairs*. It describes the Air Force legal assistance, notary, and preventive law programs. Also, it implements 10 U.S.C. 1044, which authorizes legal assistance as resources permit, and 10 U.S.C. 1044a, which authorizes certain military personnel to act as notaries public.

**SUMMARY OF REVISIONS**

This revision creates two new categories of military personnel with notary authority under 10 U.S.C. 1044a: paralegals E-4, or higher, and officers and senior NCOs stationed at geographically designated units (GSUs) appointed, in writing, by General Court-Martial Convening Authority Staff Judge Advocates (GCM SJAs). Other changes include making use of the AF Form 1175, **Legal Assistance Record** optional, instead of mandatory, clarifying that MAJCOMs must submit the installations' AF Form 435s, **Annual Report of Legal Assistance**, when forwarding the MAJCOM (consolidated) AF Form 435, and allowing notaries to use an inked stamp or a raised seal. A | indicates revisions from the previous edition.

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## Chapter 1

### LEGAL ASSISTANCE PROGRAM

**1.1. Purpose.** Legal offices provide legal assistance for two purposes: *Mission-related legal assistance*. To ensure that the legal difficulties of military members do not adversely affect command effectiveness or readiness; *Non-mission-related legal assistance*. To assist certain categories of beneficiaries (as resources permit).

**1.2. Scope.** Legal assistance consists of providing advice on personal, civil legal problems to eligible beneficiaries. For any other legal concern, the Air Force remains the client. On such matters, do not provide advice to or enter into an attorney-client relationship with individuals.

1.2.1. Limits. Do not enter into an attorney-client relationship on these issues:

- Issues involving personal commercial enterprises (unless such advice is related to the Soldiers' and Sailors' Civil Relief Act [SSCRA]).
- Criminal issues under the Uniform Code of Military Justice (UCMJ) or any state or federal criminal law.
- Standards of conduct issues.
- Law of armed conflict issues.
- Official matters in which the Air Force has an interest or is involved in the final resolution.
- Legal issues or concerns raised on behalf of another person, even if the other person is eligible for legal assistance.
- Drafting or reviewing real estate sales or closing documents, separation agreements or divorce decrees, and inter vivos trusts. If the SJA determines that an attorney in the office, whether active duty or reservist, has the expertise to draft or review these documents, then the SJA may authorize that attorney to do so.
- Representation of the client in a court or administrative proceeding.

**1.3. Mission-related Legal Assistance.** Base legal offices must provide mission-related legal assistance. Mission-related legal assistance covers the following categories:

1.3.1. Active Duty and Civilian Employees. For active duty members, including reservists and guardsmen on federal active duty under Title 10 U.S.C., and their family members entitled to an identification card, and for civilian employees stationed overseas and their family members entitled to an identification card, and for civilian employees stationed overseas and their family members residing with them who are entitled to an identification card, mission-related legal assistance includes:

- Wills, living wills, powers of attorney, and notary services.
- Dependent care issues.
- SSCRA issues.
- Veterans' reemployment rights.
- Casualty affairs.
- Landlord-tenant and lease issues.

- Tax assistance.
- Involuntary allotment issues.
- Issues that The Judge Advocate General (TJAG), the Major Command (MAJCOM) SJA, the Numbered Air Force (NAF) SJA, the commander, or the base SJA deems mission-related. Examples are overseas or operational needs for which there are no reasonable alternatives to legal assistance or for which the failure to provide legal assistance would adversely affect command.

1.3.2. Inactive Reservists or National Guard Members. For members of the reserve components subject to federal mobilization (Air National Guard and Ready Reserves) in an inactive status, mission-related legal assistance is limited to wills and powers of attorney. Provide no other legal assistance to members of the reserve components until the member is on federal active duty. Family members of members of the reserve components are not authorized any legal assistance until the sponsor is on federal active duty.

**1.4. Non-Mission-Related Legal Assistance.** Base legal offices must provide non-mission-related legal assistance to eligible beneficiaries, as resources and expertise permit. SJAs may establish priorities and set limits among the specific non-mission-related legal assistance services their offices offer and the eligible beneficiaries they serve.

1.4.1. Beneficiaries. Eligible beneficiaries include the following:

- Members of the armed forces on active duty.
- Retired personnel.
- Family members of active duty members and retired personnel, including unremarried former spouses, entitled to an identification card.
- Reservists and National Guard members on federal active duty pursuant to Title 10 U.S.C. and their family members entitled to identification cards.
- DoD civilian employees stationed overseas and their dependents residing with them.

1.4.2. Unique Situations. When it benefits the command, SJAs may authorize non-mission-related legal assistance to someone who is not an eligible beneficiary. These situations must involve people who have a present, past, or future military obligation relevant to the legal problem. Examples are reservists or National Guard members who have demobilized; Reserve Officer Training Corps Cadets who must meet dependent care responsibilities; and next-of-kin of someone killed on active duty.

## **1.5. Supervisory Responsibilities.**

1.5.1. TJAG.

- Establishes and manages the Air Force Legal Assistance Program.
- Communicates with the American Bar Association and other associations TJAG deems necessary to further the program.
- TJAG's responsibilities for this program are carried out through the Legal Assistance Division, Air Force Legal Services Agency (AFLSA/JACA).

1.5.2. AFLSA/JACA.

- Monitors the Air Force Legal Assistance Program.

- Carries out the overall administration of the Air Force Legal Assistance Program.
  - Gives advice on legal assistance matters that affect Air Force personnel world-wide.
- 1.5.3. MAJCOM, Field Operating Agency (FOA), and Direct Reporting Unit (DRU) SJAs.
- Supervise functional program staffs within their commands.
  - Make sure they follow this instruction.
  - May add requirements for mission-related legal assistance (see paragraph 1.3.1.) and, may limit non-mission-related legal assistance (See AFD 51-5, subparagraph 1.12.2).
- 1.5.4. NAF SJAs. To ensure mission readiness, NAF SJAs may add requirements for mission-related legal assistance.
- 1.5.5. Wing SJAs. Base SJAs:
- Manage the personnel and operation of legal assistance at their offices consistent with this instruction.
  - Brief the office staff, including reservists, on the purposes of legal assistance, the base program, and this instruction.
  - Communicate with local bar organizations, legal aid offices, and appropriate federal and state agencies.
  - Publicize the office's limits on non-mission-related legal assistance.

**1.6. Ethical Responsibilities and Rules.** SJAs administer the legal assistance program in strict compliance with the *Air Force Rules of Professional Responsibility*.

- 1.6.1. Only attorneys give legal advice.
- 1.6.2. Information received from a client during legal assistance, attorney work-products, and documents relating to the client are legally confidential. Release them only with the client's express permission, pursuant to a court order, or as otherwise permitted by the *Air Force Rules of Professional Responsibility*.
- 1.6.3. Judge advocates and civilian attorneys who perform legal assistance must have private offices.
- 1.6.4. Legal assistance attorneys must avoid creating the impression that they represent the Air Force's interests in resolving the client's concerns or that the Air Force has an interest in the outcome of the matter. When writing letters on a client's behalf, do not use Air Force letterhead. Include a statement in the letter making it clear the Air Force does not represent the client in resolving the matter.
- 1.6.5. Legal assistance attorneys may not interfere with an existing attorney-client relationship.

**1.7. Referrals.** People seeking legal assistance often need referral to other agencies or attorneys with whom they can deal directly. Follow these guidelines when making referrals:

- 1.7.1. For civilian criminal matters, refer the person to a civilian attorney.
- 1.7.2. For matters involving criminal action under the UCMJ or adverse administrative action, refer the person to the appropriate military defense counsel.

1.7.3. For a person who is or may be the subject of court-martial charges or other disciplinary action, refer to the SJA, even if the matter would ordinarily fall within the scope of legal assistance.

1.7.4. For matters requiring special expertise or involving an appearance before a court, tribunal, or other governmental agency, refer to a civilian attorney. SJAs may decide that certain subject areas are beyond the expertise of their office prospectively, based on the subject.

1.7.5. For matters in which the person has already retained a civilian attorney, refer to that civilian attorney.

**1.8. Referral Procedures.** When referring persons to civilian attorneys, use the following procedures:

1.8.1. Direct the person to the local bar referral service when one exists. Obtain the consent of the local bar before making other referrals.

1.8.2. If an organized bar or lawyer referral service does not exist, refer the person to a local listing of attorneys or prepare a list of at least three attorneys who have shown an interest in serving military clients. Do not refer a person to a civilian attorney by name, except in unusual cases and with the advance approval of the SJA.

1.8.3. Refer indigent persons who need a civilian attorney to the appropriate legal aid organization or local bar association for pro bono work.

1.8.4. In foreign areas, with the consent of consular officials and after consultation with the national bar, if appropriate, prepare a list of attorneys in accordance with the applicable status of forces agreement or implementing instruction.

1.8.5. Refer persons who may face charges before a foreign court to the military legal advisor.

**1.9. Records.** Offices may record legal assistance visits on an AF Form 1175, **Legal Assistance Record**, or by using the Legal Assistance Management System (LAMS) program or through any other system that compiles the required information about clients and service, or by using the Legal Assistance Management System (LAMS) program or through any other system that compiles the required information about clients and services.

1.9.1. Do not keep formal files on legal assistance clients. Return original documents to clients as soon as possible.

**1.10. Reports.** Every active duty legal office providing legal assistance submits an annual report documenting legal assistance statistics to AFLSA/JACA by 1 March. Use AF Form 435, **Annual Report of Legal Assistance Office**, RCS HAF-JAC(A) 7501. The report has emergency status code C-3. During emergency conditions, continue delayed reporting. Offices forward their report through the MAJCOM. MAJCOMs will forward their installations' AF Form 435s to JACA, together with a command AF Form 435 that consolidates all of the installations' statistics.

1.10.1. According to requirements described in AFD 51-5, attachment 1, offices must document annually the percentage of personnel tasked for deployment who are personally contacted about their personal legal needs or receive mission-related legal assistance. Report this information by letter, through the MAJCOM, to be received by JACA by 1 March.

**1.11. Forms.** Offices may use the AF Form 165, **General Power of Attorney**, and AF Form 831, **Special Power of Attorney**, for legal assistance.

**1.12. Communications.** As a legal assistance provider you can communicate directly with other legal assistance officers or paralegals. When necessary, seek guidance from your headquarters before contacting AFLSA/JACA.

## Chapter 2

### NOTARIAL ACTS AND OATHS

#### 2.1. Notarial Acts.

2.1.1. Federal Authority. Title 10 U.S.C Section 1044a grants specific people the general powers of a notary public and of a consul of the United States. Notary acts performed under Title 10 U.S.C. Section 1044a are legally binding throughout the world for federal and non-federal purposes.

2.1.2. Legal Limits. Some state statutes require more than an acknowledgment before a notary public for a document to be effective. Also, some states prohibit notaries from performing certain acts, such as certifying certain types of documents. Notaries should be familiar with state requirements.

2.1.3. Role of Notary. A notary acts as an official, unbiased witness to the identity and signature of the person who comes before the notary and has the authority to administer oaths and affirmations. Every notary act affects the legal rights of others. SJAs will make sure that notaries do not abuse their authority.

2.1.4. Persons with Notary Authority. Under the authority of 10 U.S.C. Section 1044a, the following persons have the general powers of a notary public and of a consul of the United States for notary acts executed for eligible legal assistance beneficiaries:

- Civilian attorneys employed by the Air Force serving as legal assistance attorneys and who are licensed to practice law in the United States.
- Judge advocates on active duty or performing inactive duty training.
- All adjutants, assistant adjutants, acting adjutants, and personnel adjutants.
- Enlisted paralegals, E-4 or higher, on active duty or performing inactive duty training.
- Active duty Air Force personnel who satisfy **all three** of the following criteria:
- A commissioned officer or senior non-commissioned officer (holding the rank of Master Sergeant or higher);
- Stationed at a geographically separated unit (GSU) or remote location where no judge advocate or paralegal notary is also assigned, and,
- Appointed, in writing, by the unit's servicing general court-martial convening authority (GCM) staff judge advocate (SJA) to exercise notary authority under 10 U.S.C. 1044a and this instruction.

2.1.5. Who is Eligible to Use Military Notary Services. The following persons may receive notary service:

- Members of any of the U.S. Armed Forces.
- Persons eligible for legal assistance.
- Persons serving with, employed by, or accompanying the armed forces outside the United States and outside Puerto Rico, Guam, and the Virgin Islands.
- Other persons subject to the UCMJ.



2.1.6. Civilian Employees as Notaries. Commanders may name civilian employees to serve as notaries as part of their official duties. Any civilian employee must qualify as a notary under the laws of the state where he or she will serve.

2.1.6.1. Designations of employees as notaries must be in writing and state that reimbursement for expenses is authorized. Title 5 U.S.C. Section 5945 authorizes reimbursement of commission expenses. These expenses may not exceed the actual cost of any fees, bonds, seals, perforating devices, and any other expenses incurred. Make reimbursements in accordance with local procedures.

2.1.6.2. Commanders may delegate their designation authority to the base SJA.

2.1.7. E-4 Paralegals as Notaries. Staff judge advocates will not allow E-4 paralegals to perform notary duties until they have received proper training. This means that only those E-4 paralegals who have been task-certified to perform notary acts as specified in the Career Field Education and Training Plan (CFETP) will act as notaries.

2.1.8. Non-JA Notaries at GSUs. GCM SJAs are responsible for identifying those units where a non-JA notary should be appointed. SJAs are advised to appoint only the number of non-JA notaries necessary to avoid undue hardship to members at the GSU or remote site. All notary appointments must be in writing. The GCM SJA will maintain a copy of the written appointment letter for at least two years beyond the end of the notary's assignment. The non-JA notary's authority may be revoked at any time, with or without cause, by the GCM SJA.

2.1.8.1. The base legal office that supports the GSU or remote site will provide all support to non-JA notaries. This support will include, at a minimum, training and supervision. The base legal office is responsible for notifying the GCM SJA when the non-JA notary is reassigned from the unit (thereby ending the notary's authority).

2.1.8.2. Non-JA notaries are bound by the same rules set out for attorney, paralegal and civilian notaries under this instruction. In addition, non-JA notaries must comply with the following rules:

2.1.8.2.1. The notary shall not exercise notary authority until the servicing base level SJA has determined that the notary has been properly trained.

2.1.8.2.2. The notary may not provide legal advice. The notary may not assist another in preparing or completing legal documents, including wills, deeds, contracts, leases, affidavits, separation agreements and powers of attorney, except for completing the notary jurat on such documents.

2.1.8.2.3. The notary may only exercise notary authority while performing official duties at the duty site. The notary may not perform notary duties while in a TDY or leave status.

2.1.8.2.4. The notary's authority automatically terminates when the notary is re-assigned from the GSU or remote unit. The notary will keep his or her personal notary log, but will not keep the notary seal or stamp.

2.1.9. Authenticity and Seals. When signing documents in their official capacity, notaries specify the date and location, list their title and office, and use a raised seal or inked stamp citing Title 10 U.S.C. Section 1044a.

2.1.10. Notary Guidelines. If you are exercising notary authority under Title 10 U.S.C. Section 1044a, follow these guidelines:

2.1.10.1. Before performing a notary act, verify the identity of each person whose signature you will notarize.

2.1.10.2. Do not accept any signature as genuine on the word of a third person. The person whose act is the subject of the notary act must personally appear before the notary.

2.1.10.3. Administer oaths for any sworn document. The person being sworn must appear before the notary.

2.1.10.4. Do not certify a copy of any document as accurate without comparing it against the original. Do not certify court records, birth certificates, divorce decrees or similar documents, or any document that on its face indicates that it may not be copied. Notaries should check state requirements.

2.1.10.5. Maintain a notary log. The log must include the signer's name and signature, the type of document, date, and location. Take your log with you when you have a permanent change of station.

## **2.2. Oaths.**

2.2.1. The United States Code authorizes military members to administer oaths. SJAs will make sure their staff is familiar with the following:

2.2.2. Title 10 U.S.C. Section 936a, which grants specific people the authority to administer oaths for military administration, including military justice.

2.2.3. Title 10 U.S.C. Section 936b, which authorizes specific people to administer oaths when necessary to perform their duties.

2.2.4. Title 10 U.S.C. Sections 502 and 1031, which authorize U.S. Armed Forces commissioned officers to administer oaths of enlistment (section 502) and oaths of appointment in the Armed Forces (section 1031).

## **2.3. Notary Restrictions.**

2.3.1. Compensation. No person may receive compensation for notarial acts or oaths, except for reimbursement of expenses.

2.3.2. Depositions. Regular officers may not take depositions under a commission issued by a civilian court. Acceptance of such commission may terminate the officer's appointment.

## Chapter 3

### PREVENTIVE LAW PROGRAM

**3.1. Purpose.** Educating commanders, members, and their families on legal issues prevents legal problems and reduces the time and resources needed to correct legal errors.

**3.2. Scope.** Because preventive law is very important, every base will have an active preventive law program. The SJA determines the extent of the base program.

3.2.1. Preventive law programs include information on all legal matters, not just legal assistance issues.

3.2.2. Preventive law programs stress those legal areas where the Air Force has a direct interest in the outcome. At a minimum include:

3.2.2.1. Deployment Preparation. Educate members on their personal legal needs for mobility readiness and deployment and their rights under the SSCRA and the Veterans' Reemployment Rights Act. Stress the importance of preparing wills, powers of attorney, and other necessary documents before deployment. Stress to commanders the importance of making predeployment planning a priority within their units.

3.2.2.2. Commander Awareness. Educate commanders and staff agencies on the full range of legal services provided by the legal office (not just legal assistance matters), the advantages to the command of timely use of these legal services, and all legal matters affecting command, including, as examples, fraud, waste and abuse, standards of conduct, environmental issues, contract issues, military justice issues, and claims matters. Communicate with commanders and staff agencies on the status of legal services.

3.2.2.3. Tax Assistance. Establish an active, aggressive, well-publicized tax program.

3.2.2.4. Legal Assistance and Consumer Protection. Provide information on personal, civil legal matters.

**3.3. Program Management.** See AFPD 51-5, Section C, for a full description of responsibilities in the program. MAJCOM SJAs supervise the program within their commands.

3.3.1. Base SJAs appoint a preventive law officer to manage the base-level preventive law program. SJAs communicate with other military legal offices in the state and appropriate state agencies, such as consumer protection agencies.

**3.4. Communication.** All judge advocates can communicate directly with each other and with relevant organizations and persons about preventive law matters.

**3.5. Forms Prescribed.** AF Form 165, **General Power of Attorney**, AF Form 435, **Annual Report of Legal Assistance**, AF Form 831, **Special Power of Attorney**, and AF Form 1175, **Legal Assistance Record**.

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